United Nations S/2003/755

Security Council

Distr.: General
24 July 2003

Original: English

Letter dated 27 June 2003 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its forty-eighth session, which was held at Geneva from 24 to 26 June 2003.

During the opening plenary meeting of the forty-eighth session representatives of Kuwait and Pakistan addressed the Council. Their respective statements are being sent by mail with the original of this letter.

During the session the Council considered nine reports and recommendations made by the Panels of Commissioners in the D, E2, E3, E4 and F3 categories of claims. The reports on category D claims concern the review of individual claims for damages above US$ 100,000; the report on category E claims concerns the review of claims filed on behalf of non-Kuwaiti corporations and other business entities; the report on category E3 claims concerns the review of non-Kuwaiti construction and engineering claims; the reports on category E4 claims concern the review of Kuwaiti corporate claims; and the report on category F3 claims concerns the review of Kuwaiti Government claims. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council. The total amount awarded in all of the reports approved at this session is approximately $2.3 billion.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 1 February to 30 April 2003. The report covers the processing of claims, the withdrawal of claims and the payment of approved claims.

The Council considered the level of Iraq's contribution to the Fund in the light of paragraph 21 of Security Council resolution 1483 (2003), which provides that 5 per cent of all export sales of petroleum, petroleum products and natural gas from Iraq following the date of adoption of the resolution shall be deposited into the Compensation Fund. The Council took note of the new level of income into the Compensation Fund as set by resolution 1483 (2003) and discussed the implications of the reduced income into the Fund, including the need to put in place a temporary payment mechanism in lieu of the current arrangement provided for by Governing Council decision 100 (S/AC.26/Dec.100 (2000)/Rev.1). The Council will keep this question on its agenda.

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The Council discussed the arrangements for ensuring that payments are made to the Compensation Fund in the light of paragraphs 20 and 21 of Security Council resolution 1483 (2003), which provide that 5 per cent of all export sales of petroleum, petroleum products and natural gas from Iraq shall be deposited into the Compensation Fund, and that unless an internationally recognized, representative government of Iraq and the Governing Council, in the exercise of its authority over methods of ensuring that payments are made into the Compensation Fund, decide otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto. The Council received general background information on this issue from the secretariat, and information was provided by the delegation of the United States on the measures taken by the Coalition Provisional Authority to ensure payment of the 5 per cent into the Fund. The Council requested the secretariat to prepare an information note on this matter for the Working Group's further consideration at a future informal meeting and for further consideration at the next session of the Governing Council.

The Council considered the establishment of a temporary payment mechanism and adopted decision 197 (S/AC.26/Dec.197 (2003)) for the purpose of establishing that mechanism. Under the mechanism $200 million from the Compensation Fund will be made available for the payment of claims every quarter. Successful claimants in all categories will receive an initial amount of $100,000 or the unpaid principal amount of the award, if less, subsequent rounds of payments of $100,000 to successful claimants in all categories being disbursed in the order in which they have been approved, until the available funds for distribution have been exhausted. While noting that decision 17 (S/AC.26/Dec.17 (1994)) provides that the Commission should ensure that similarly situated claimants within each category of claims are treated equally, to the extent feasible, regardless of the chronological order in which their claims are decided, the Council concluded that (a) owing to the special circumstances faced by environmental damage claims, consideration would be given at the appropriate time to the possibility of a different payment mechanism for successful environment claimants; and (b) recognizing that the reduced funding of the Compensation Fund that may occur during the next year would further delay the full payment of awards that were approved prior to the forty-eighth session of the Governing Council and that have unpaid balances, the Council also concluded that, once the level of income into the Compensation Fund permitted, consideration would be given to means by which payments on such awards might be resumed.

The Council discussed several issues relating to the processing of claims, including the twenty-second report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure, and approved corrections to certain category A claims.

The Council considered the establishment of a final deadline for the receipt of requests made pursuant to article 41 of the Provisional Rules of Claims Procedure for correction of decisions concerning claims in categories D, E and F, in the light of an information note prepared by the secretariat on this issue. The Council adopted decision 196 (S/AC.26/Dec.196 (2003)), which provides that the final deadline for the submission of requests for corrections for claims approved by the Governing Council in or prior to June 2003 will be 31 December 2003. For those claims remaining to be approved, the final deadline will be 180 days after each applicable Governing Council decision.

The Council continued its consideration of the request made by the Government of Iraq on 27 January 2003 for additional funding for the provision of technical assistance to Iraq in the review of F4 environmental claims pursuant to Governing Council decision 124 (S/AC.26/Dec.124 (2001)). In the light of Security Council resolution 1483 (2003), the recent developments in Iraq and the lifting of sanctions against Iraq, the Council decided to remove this issue from its agenda.

The Council further considered the request made by the delegation of Kuwait at the opening plenary meeting of the forty-seventh session concerning the late filing of a number of individual claims from the stateless persons living in Kuwait (the Bedoun). Pursuant to the request made by the Governing Council at the forty-seventh session, the secretariat prepared an information note containing a list of proposed questions designed to solicit further information from the Government of Kuwait on this question. The Council requested the Executive Secretary to send the list of questions to the Government of Kuwait and decided that the issue should remain on the agenda for the forty-ninth session of the Council, to be held in September 2003, and that it should also be referred to an informal meeting of the Working Group prior to the session, pending the receipt of further information from the Government of Kuwait.

The Council also further considered the request made by the Government of Kuwait at the opening plenary meeting of the forty-seventh session, that 381 Kuwaiti category C claims (individual claims for damages up to $100,000) that were not sent to the Compensation Commission, as the claimants had also claimed in category A for the higher amount, be accepted for filing. The Council received an information note prepared by the secretariat on this issue. After extensive discussion the Council decided, on the basis of the previously established criteria, and the fact that decision 21 of the Council was adopted in 1994, that the request made by the Government of Kuwait for the late filing of the category C claims would not be accepted. The Council requested the secretariat to notify the Government of Kuwait of the Council's decision.

The Council considered the issue of competing claims in category D, whereby compensation has already been awarded to a claimant in category C, and for which the D Panels of Commissioners have recommended an award of compensation for the same loss to the category D claimant, having found that the D claimant was the rightful owner of the business in question. The Council also considered the issue of competing claims in category C, D and E4. The secretariat prepared two information notes on this matter. The Council was not in a position to reach a consensus on this issue and referred it to a future informal meeting for the Working Group's further consideration, with the aim of resolving the issue and particularly the withholding of payment to the 41 claimants who have had awards approved, at the Council session to be held in September 2003.

At the forty-sixth session held in December 2002, the Governing Council decided that an archiving policy taking into account the needs of the Compensation Commission was required, and recommended that such a policy be adopted. The Council also noted that the details of the policy remained under review by the Council, and requested the secretariat to provide further information on the subject for the Council's further consideration. In addition to the previous information notes distributed to the Governing Council on 10 December 2001, 28 May 2002 and 11 November 2002, the secretariat prepared an information note, dated 5 June 2003,

containing the details of the proposed archiving policy. The Council also heard a presentation by the secretariat concerning the proposed policy, and considered the issue in the light of the information presented. The Council, while noting the urgency in the need to implement an archiving policy, requested the secretariat to provide further information concerning the proposed policy for the Working Group's further consideration at an informal meeting and at the next session of the Governing Council.

The Council considered the request made by the Government of Pakistan at the opening plenary meeting of the session concerning the late filing of a number of claims. The Council requested the Executive Secretary to write to the Government of Pakistan explaining the established criteria applied by the Governing Council to assess whether late-filed claims should be accepted for filing, namely the existence of a war situation or civil disorder and evidence of a prior attempt to file the claims within the relevant filing deadlines. The Council also recommended that the Government of Pakistan be requested to identify any claims among those contained in its request for late admission to assess whether they met those criteria and to submit supporting documentation on such claims to facilitate the Council's further consideration of the acceptability of the request. The Council requested the Executive Secretary, in consultation with the Government of Pakistan, to set a suitable deadline for the Government's response to the secretariat.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency, and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds.

The Council discussed several audit-related issues. The Council was informed by the secretariat that a new memorandum of understanding between the Office of Internal Oversight Services and the Compensation Commission has been completed and signed. The Council considered the reports of the Office of Internal Oversight Services concerning its audit of the twenty-second instalment of E3 claims and its review of the processing of F1 claims. The Council took note of the observations of the Office and the secretariat's responses thereto. The Council also further considered the question of requiring Governments to provide audit certificates which comply with national accounting standards, in order to enhance the transparency of the distribution of future payments, for payment reports submitted to the Commission. The secretariat prepared an information note on the matter, to which was annexed a proposed audit certificate. The Council referred this issue to a future informal meeting for the Working Group's further consideration.

Finally, the Governing Council decided to hold its forty-ninth session from 16 to 18 September 2003.

To date, the Commission has awarded compensation of approximately $46.3 billion, including the awards approved at the forty-eighth session, and approximately $17.6 billion of the amounts awarded have been made available to Governments and international organizations for distribution to successful claimants in all categories of claims. The payments to successful claims approved by the Council at the forty-eighth session will be made in the next round of payments, scheduled for the third week of July 2003, in accordance with Governing Council

decision 197. The balance of the Compensation Fund at present is close to $500 million.

(*Signed*) K. **Metscher**
Chargé d'affaires a.i.

for Walter **Lewalter**
President of the Governing Council

Annex I

Summary of recommendations

A. Report and recommendations made by the D2 Panel of Commissioners concerning part two of the fourteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/7)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Canada	12	2	10 341 557.97	3 002 602.97
Egypt	2	4	3 277 938.10	227 250.33
India	2	-	6 427 957.93	455 674.31
Jordan	45	4	46 628 816.85	13 634 427.33
Kuwait	113	-	119 983 615.14	71 234 123.27
Pakistan	1	-	2 188 600.00	851 549.30
Spain	1	-	279 366.37	78 050.86
Syrian Arab Republic	35	1	17 546 256.61	5 149 582.16
United States	2	1	1 413 928.25	68 473.72
Total	**213**	**12**	**208 088 037.22**	**94 701 734.25**

B. Report and recommendations made by the D1 Panel of Commissioners concerning part two of the fifteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/8)

Country or international organization	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Australia	1	-	55 000.00	23 949.76
Canada	3	-	1 171 498.47	129 988.17
Egypt	3	7	83 106 767.73	468 345.93
France	2	1	2 110 751.56	248 530.23
Germany	1	-	784 141.49	86 452.36
India	26	13	21 336 779.29	2 316 675.82
Israel	3	-	942 200.00	77 209.94
Italy	2	-	2 674 275.50	75 158.78
Jordan	44	2	50 419 635.32	14 384 359.46
Kuwait	62	2	499 654 605.90	222 297 262.08
Lebanon	1	-	260 660.54	17 434.70
Netherlands	1	-	1 531 764.00	710 793.87
Pakistan	1	1	2 005 356.40	185 666.86
Sudan	3	1	2 190 723.94	242 674.69

Country or international organization	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Syrian Arab Republic	1	-	182 961.94	17 101.18
Turkey	-	1	201 500.00	nil
United Kingdom	10	2	11 411 137.84	666 141.48
United States	6	-	5 323 121.68	890 970.32
Yemen	11	-	9 261 615.88	1 794 668.87
UNRWA Gaza	1	-	122 283.74	17 500.00
Total	**182**	**30**	**694 746 781.22**	**244 650 884.50**

C. Report and recommendations made by the D2 Panel of Commissioners concerning part one of the sixteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/9)

Country or international organization	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Austria	1	-	55 363.32	36 332.18
Canada	5	1	2 251 203.76	1 032 660.40
Egypt	3	2	5 036 775.90	448 485.53
India	4	6	8 939 705.52	980 511.17
Jordan	44	5	31 246 160.13	6 988 262.42
Kuwait	185	-	105 936 067.91	66 142 701.19
Lebanon	6	-	3 237 216.73	651 062.75
Pakistan	5	-	3 536 929.02	940 431.41
Saudi Arabia	3	17	36 093 613.14	137 431.56
Syrian Arab Republic	5	3	1 297 740.03	344 380.03
Turkey	-	1	7 345.00	0.00
United Kingdom	3	2	1 752 566.90	129 708.00
United States	7	2	2 755 412.56	853 299.70
Yemen	17	3	8 148 946.63	2 641 402.54
UNRWA Gaza	1	1	989 807.67	4 844.29
Total	**289**	**43**	**211 284 854.22**	**81 331 513.17**

D. Report and recommendations made by the Panel of Commissioners concerning the thirteenth instalment of E2 claims (S/AC.26/2003/10)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Austria	-	1	3 176 097	nil
China	2	4	115 992 049	531 815
Denmark	-	1	1 340 461	nil
Egypt	7	22	5 965 096	148 607
France	2	8	15 519 620	3 154 113
Germany	8	17	59 791 292	709 762
Greece	-	1	207 539	nil
India	3	7	265 303	49 526
Ireland	1	-	33 411	33 411
Italy	4	5	7 778 167	150 460
Japan	3	-	2 269 390	637 086
Netherlands	6	10	7 790 626	360 689
Pakistan	1	2	750 401	4 350
Portugal	1	2	340 105	3 618
Saudi Arabia	1	2	625 361	216 000
Singapore	1	1	675 298	609 466
Spain	1	3	833 348	29 939
Switzerland	3	-	7 428 262	949 547
Syrian Arab Republic	1	-	90 196 456	4 187 616
Tunisia	-	1	458 060	nil
Turkey	9	2	3 728 522	1 978 684
United Kingdom	23	18	77 072 536	4 581 707
United States	-	3	3 203 599	nil
Total	**77**	**110**	**405 440 999**	**18 336 397**

E. Report and recommendations made by the Panel of Commissioners concerning the twenty-fifth instalment of E3 claims (S/AC.26/2003/11)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Bosnia and Herzegovina	-	2	51 528 728	nil
France	-	1	28 718 764	nil
India	-	1	155 140 000	nil
Italy	-	1	8 030 675	nil
Netherlands	-	1	583 206	nil
Pakistan	-	1	309 487 029	nil
Saudi Arabia	-	1	7 930 044	nil
Turkey	1	-	4 708 497	295 820
United Kingdom	2	2	73 936 332	1 486 318
United States	-	2	50 226 599	nil
Total	**3**	**12**	**690 289 874**	**1 782 138**

F. Report and recommendations made by the Panel of Commissioners concerning the eighteenth instalment of E4 claims (S/AC.26/2003/12)

Table 1
Recommended awards for non-overlapping claims

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	58	4	119 218 384	39 492 956

Table 2
Recommended awards for overlapping claims

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	103	-	558 509 453	89 319 148

Table 3

Distribution of amounts to Kuwaiti corporate claimants applying bilateral committee determinations made pursuant to article 2 of the guidelines annexed to decision 123 to recommended awards

Country	*Number of claims entitled to receive payment*	*Number of claims not entitled to receive payment*	*Amount claimed in E4 claims (US$)*	*Amount of compensation (US$)*
Kuwait	79	24	216 030 152	45 176 380

Table 4

Distribution of awards to individual claimants applying bilateral committee determinations made pursuant to article 2 of the guidelines annexed to decision 123 to recommended awards

Country or international organization	*Number of claims entitled to receive payment*	*Number of claims not entitled to receive payment*	*Amount claimed for corporate losses in individual claims (US$)*	*Amount of compensation (US$)*
Canada	2	2	13 692 668	3 644 017
Egypt	2	-	352 377	64 237
India	5	7	18 968 588	2 387 871
Jordan	66	26	299 975 765	33 398 937
Lebanon	1	1	877 993	511 133
Syrian Arab Republic	6	1	2 745 585	573 838
United Kingdom	2	-	1 671 661	358 959
United States	2	-	3 465 131	1 315 602
Yemen	1	1	285 865	285 865
UNRWA Gaza	2	-	443 668	212 020
Total	**89**	**38**	**342 479 301**	**42 752 479**

G. Report and recommendations made by the Panel of Commissioners concerning the twenty-third instalment of E4 claims (S/AC.26/2003/13)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	17	-	466 129 457	159 066 498

H. Report and recommendations made by the Panel of Commissioners concerning instalment twenty-three (A) of E4 claims (S/AC.26/2003/14)

Table 1
Recommended awards for stand alone claims

Number of Kuwaiti corporate claims recommended for payment	*Number of Kuwaiti corporate claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
105	5	148 172 826	38 891 974

Table 2
Distribution of awards to individual claimants applying bilateral committee determinations made pursuant to article 2 of the guidelines annexed to decision 123 to recommended awards in the report

Country or international organization	*Number of individual claims*	*Amount claimed for corporate losses in individual claims (US$)*	*Amount of compensation (US$)*
Austria	2	319 870	nil
Canada	3	1 067 509	557 629
Egypt	2	200 692	61 779
India	3	8 021 540	1 335 198
Jordan	109	128 280 137	30 534 516
Lebanon	1	67 266	26 907
Netherlands	1	542 837	196 793
Spain	1	204 250	33 965
Syrian Arab Republic	9	5 662 863	2 540 779
United Kingdom	1	595 156	120 411
Yemen	1	1 604 287	697 733
UNRWA Gaza	2	1 606 419	246 420
Total	**135**	**148 172 826**	**36 352 130**

I. Report and recommendations made by the Panel of Commissioners concerning part three of the third instalment of F3 claims (S/AC.26/2003/15)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	1	1	72 860 612 638	1 507 604 000

Annex II

Documents before the Compensation Commission at its forty-eighth session

1. Report and recommendations made by the D2 Panel of Commissioners concerning part two of the fourteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/7).

2. Decision concerning part two of the fourteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.186 (2003)).

3. Report and recommendations made by the D1 Panel of Commissioners concerning part two of the fifteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/8).

4. Decision concerning part two of the fifteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.187 (2003)).

5. Report and recommendations made by the D2 Panel of Commissioners concerning part one of the sixteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/9).

6. Decision concerning part one of the sixteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.188 (2003)).

7. Report and recommendations made by the Panel of Commissioners concerning the thirteenth instalment of E2 claims (S/AC.26/2003/10).

8. Decision concerning the thirteenth instalment of E2 claims (S/AC.26/Dec.189 (2003)).

9. Report and recommendations made by the Panel of Commissioners concerning the twenty-fifth instalment of E3 claims (S/AC.26/2003/11).

10. Decision concerning the twenty-fifth instalment of E3 claims (S/AC.26/Dec.190 (2003)).

11. Report and recommendations made by the Panel of Commissioners concerning the eighteenth instalment of E4 claims (S/AC.26/2003/12).

12. Decision concerning the eighteenth instalment of E4 claims (S/AC.26/Dec.191 (2003)).

13. Report and recommendations made by the Panel of Commissioners concerning the twenty-third instalment of E4 claims (S/AC.26/2003/13).

14. Decision concerning the twenty-third instalment of E4 claims (S/AC.26/Dec.192 (2003)).

15. Report and recommendations made by the Panel of Commissioners concerning instalment twenty-three (A) of E4 claims (S/AC.26/2003/14).

16. Decision concerning instalment twenty-three (A) of E4 claims (S/AC.26/Dec.193 (2003)).

17. Report and recommendations made by the Panel of Commissioners concerning part three of the third instalment of F3 claims (S/AC.26/2003/15).

18. Decision concerning part three of the third instalment of F3 claims (S/AC.26/Dec.194 (2003)).

19. Twenty-second report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2003/16).

20. Decision concerning corrections of awards pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.195 (2003)).

21. Decision concerning the establishment of deadlines for the receipt of requests made pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.196 (2003)).

22. Decision concerning a temporary payment mechanism (S/AC.26/Dec.197 (2003)).